

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	David H. Coar	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 1204	DATE	4/25/2003
CASE TITLE	U.S.A. vs. Bradley Vallem		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

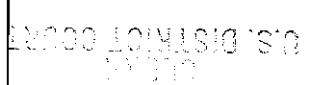
Defendant's Motion to Dismiss Counts of the Indictment

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due ____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] For the reasons stated in the attached memorandum, Defendant's Motion to Dismiss Counts of the Indictment [Doc # 11] is denied.

David H. Coar

- (11) ☒ [For further detail see order attached to the original minute order.]

<input checked="" type="checkbox"/>	No notices required, advised in open court.		number of notices	Document Number 19
<input type="checkbox"/>	No notices required.		APR 28 2003 date docketed	
<input type="checkbox"/>	Notices mailed by judge's staff.		<i>[Signature]</i> docketing deputy initials	
<input type="checkbox"/>	Notified counsel by telephone.		date mailed notice	
<input type="checkbox"/>	Docketing to mail notices.		mailing deputy initials	
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jar/lc courtroom deputy's initials		Date/time received in central Clerk's Office 01 APR 25 PM 2:21		

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The central issue in Defendant's Motion to Dismiss the challenged counts of the indictment is which statute of limitations should apply: the five year statute of limitations of 18 U.S.C. § 3282 or the ten year statute of limitations of 18 U.S.C. § 3293. If the five year statute of limitations applies, both sides agree that the prosecution would be barred by the statute of limitations. If the ten year statute of limitations applies, the prosecution can proceed. In order for the ten year statute of limitations to apply, the acts of wire fraud alleged in the challenged counts must have "affected a financial institution." 18 U.S.C. § 3293.

Before addressing Defendant's arguments directly, the Court needs to step back and examine the elements of a conviction for wire fraud. "In order to establish a violation of the mail or wire fraud statutes, the government must prove (1) that the defendant participated in a scheme to defraud; (2) the defendant intended to defraud; and (3) the defendant used the . . . wires (18 U.S.C. § 1343) in furtherance of the fraudulent scheme." United States v. Tadros, 310 F.3d 999, 1006 (7th Cir. 2002). In this case, the statute of limitations essentially builds in another element: that the wire fraud "affected a financial institution."

In each of the challenged counts, Defendant argues that the allegations do not affect a financial institution because the recipient of the information transmitted by wire was not a financial institution. In Counts One through Three, the Defendant is accused of sending a fraudulent reporting form to the SEC; in Count Five, the recipient of the wire was ThomasBankWatch, Inc; in Count Seven, the recipient of the wire was Salomon Brothers, Inc.; and in Count Nine, the recipient of the wire was an employee of T. Rowe Price.

Defendant's view of the statute requires the Court to read in a requirement that the financial institution be either the recipient of the wire communication or the direct object of the

fraudulent scheme. The statute requires neither. As long as the fraudulent scheme “affects a financial institution,” the ten year statute of limitations applies. This extends the five year statute of limitations for a fairly broad class of crimes, but that appears to be what the statute requires. See United States v. Pelullo, 964 F.2d 193, 216 (3rd Cir. 1992) (“Clearly, . . . Congress chose to extend the statute of limitations to a broader class of crimes.”).

Looking at the indictment, then, it alleges that Defendant’s corporation “fraudulently obtained and maintained nearly \$1,500,000,000 in loan commitments and lines of credit from financial institutions” (Indictment, Count One ¶20.) It further alleges that lenders “lost over \$40,000,000 on loans extended to Mercury Finance [Defendant’s corporation].” (Id.) Assuming these allegations to be true, as the Court must on a motion to dismiss the indictment, the indictment sufficiently alleges that the wire fraud affected a financial institution.¹

Whether the wire fraud actually did affect a financial institution is a jury question. In a Second Circuit case where the wire fraud indictment was filed six years after the actions took place, the district court “charged the jury that in order to convict, the government was required to prove that [the Defendant’s] wire fraud . . . affected a financial institution.” United States v. Bouyea, 152 F.3d 192, 195 (2nd Cir. 1998). In this case, the Court will follow the same course: to sustain a conviction the government must prove for each count of the indictment that the wire fraud affected a financial institution.² The jury will decide whether the government is able to

¹Although this allegation is originally set forth in Count One, each subsequent count realleges and incorporates paragraphs one through twenty, making the allegation part of each count.

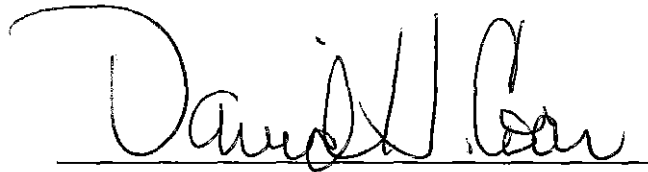
²The Court expresses no opinion as to the appropriate standard of proof for whether the wire fraud affected a financial institution.

sustain that burden.

CONCLUSION

For the reasons set forth in this opinion, Defendant's Motion to Dismiss Counts One, Two, Three, Five, Seven, and Nine of the indictment for failure to comply with the five year statute of limitations is denied.

Enter:

A handwritten signature in black ink, appearing to read "David H. Coar", written over a horizontal line.

David H. Coar
United States District Judge

Dated: April 25, 2003